

# The Lawyer's Guide to Using and Citing Wikipedia

By Lee F. Peoples

A wiki is a webpage created through collaborative effort. The most famous wiki is Wikipedia, an online encyclopedia that contains over 15 million articles in 270 languages. Anyone can create or edit Wikipedia content at any time. Wikipedia makes no guarantees about the validity of the information it contains and warns users that articles may contain false or debatable information. Wikipedia articles have been purposely falsified by pranksters, and as a result, changes to articles about living people must be verified by Wikipedia editors before going live. The citation of Wikipedia in papers and exams has been formally banned at several colleges, and Wikipedia's founder has publicly warned college students not to cite it in their papers.

Surprisingly Wikipedia has been cited in over 400 judicial opinions.<sup>1</sup> Many of these references are harmless citations used for background information or dicta. But in some instances courts have taken judicial notice of Wikipedia content, decided important motions on the basis of Wikipedia entries and relied on Wikipedia to support judicial reasoning.

### USING WIKIS

In spite of its deficiencies, Wikipedia can be a useful starting point for research. Wikipedia can be used for gathering search terms before beginning research in an area that you are unfamiliar with. A few minutes spent mining a Wikipedia entry for relevant search terms can save considerable time and produce more relevant search results when using LexisNexis or Westlaw. Some Wikipedia entries are carefully

footnoted with references to reliable sources of information. A few moments spent reviewing the footnotes may lead you to a relevant source. For example, in a recent opinion, the 7th Circuit referenced the Wikipedia entry on shell corporations and noted that the Wikipedia entry was quoting from *Barron's Finance & Investment Handbook*.<sup>2</sup>

A wiki created or edited by a noted expert in a particular area of law could potentially be superior to a law review article or book by the same expert. The wiki could be updated instantly and reflect the most recent changes in the law. In contrast, it would take the expert months or years to publish a treatise or law review article discussing the latest developments in the law. Examples of these types of wikis include:

- Workers' Compensation Law, [www.workerscompensationok.com/](http://www.workerscompensationok.com/), is a useful wiki that contains an "unofficial summary and analysis of issues that are frequently addressed by the Oklahoma Workers' Compensation Court."<sup>3</sup> The wiki is authored by Oklahoma Workers' Compensation Court Judge Tom Leonard and is updated frequently.
- ScotusWiki, [www.scotuswiki.com](http://www.scotuswiki.com), focuses on the U.S. Supreme Court. It was launched by the highly-respected Supreme Court specialist Tom Goldstein who is famous for his SCOTUSblog. Only "regular SCOTUSblog contributors, top law students, and leading experts in various legal fields" are permitted to edit the content of ScotusWiki.<sup>4</sup>
- Cornell Law School's Wex, <http://topics.law.cornell.edu/wex>, is a wiki about law that only allows "qualified experts" to write or edit content. Boasting over 5,000 entries, Wex is currently the most robust wiki about law written by experts.
- Many lawyers and legal academics who share their expertise on the Internet do so using a blog instead of a wiki. Two useful resources for locating blogs about law are Justia's BlawgSearch, <http://blawg-search.justia.com/blogs>, and Blawg.org.

Several other wikis are worth mentioning for their efforts to tap into the collaborative nature of the wiki platform.

- The 7th Circuit Court of Appeals launched a wiki in 2007, [http://www.ca7.uscourts.gov/wiki/index.php?title=Main\\_Page](http://www.ca7.uscourts.gov/wiki/index.php?title=Main_Page). The main feature of the wiki is the *Practitioners Handbook* which may be edited by attorneys who complete an online registration form. Chief Judge Frank H. Easterbrook explained the decision to open the handbook up for revision "As a group, the attorneys practicing before our court know more about appellate practice than any single person. With our wiki, we're drawing on that wisdom."<sup>5</sup>
- Spindle Law, [www.spindlelaw.com](http://www.spindlelaw.com), was recently launched by several Columbia law graduates as a wiki-style treatise that "assembles rules of law together with the authorities to back up those rules. Structurally, it organizes the law into a tree, with each branch leading to ever-narrowing

branches."<sup>6</sup> Registered users can create or edit content on Spindle Law and editors review the submissions to ensure quality. Spindle Law is still very much a work in progress and currently only contains content on evidence, the Clean Air Act and securities law.

- Judgepedia, [www.judgepedia.org/index.php/Main\\_Page](http://www.judgepedia.org/index.php/Main_Page), is a wiki about judges that any registered user can contribute to. It has nearly 100,000 entries on federal and state court judges. Judgepedia has the potential to be a valuable source of information about the judiciary. Unfortunately, many of the entries about Oklahoma judges have yet to be developed.

#### WHEN CITING A WIKI MAY BE APPROPRIATE

The agility of wikis gives them an advantage over print resources in certain situations. Wikipedia entries have been cited in judicial opinions to define new slang terms, popular culture references, and to explain jargon, lingo and technology terms.<sup>7</sup> Many of these terms are so new that they are not yet included in more traditional reference sources like encyclopedias or dictionaries. For example, Judge Alex Kozinski of the 9th Circuit Court of Appeals recently turned to Wikipedia to define a term related to the Internet in a dissenting opinion. Judge Kozinski criticized the majority opinion for defining the term using a print dictionary published in 1963, more than 20 years before the Internet came into existence.<sup>8</sup> Similarly, the Western District Court of Oklahoma<sup>9</sup> cited a wiki to define the technology term "data-carving," and the 10th Circuit Court of Appeals<sup>10</sup> cited Wikipedia for a list of computer file formats.

The collaborative process through which Wikipedia entries are created makes them particularly useful in certain situations. Courts interpreting insurance contracts have turned to Wikipedia for evidence of the common usage or ordinary and plain meaning of a contract term. For example, a Wikipedia entry has been relied on to define the terms "recreational vehicle"<sup>11</sup> and "car accident"<sup>12</sup> in the context of insurance contracts. It is conceivable that in the future courts may turn to Wikipedia to determine public perception in trademark infringement or dilution cases or to establish community standards in the context of prosecutions for obscene material.<sup>13</sup>

## EVALUATING A WIKIPEDIA ENTRY

Wikipedia entries should be evaluated to determine if they meet basic standards of quality before they are cited. Wikipedia editors include editorial notes in Wikipedia entries to indicate the quality of the entry. Entries bearing a small gold star in the upper right hand corner are “featured articles”<sup>14</sup> and have been recognized for being accurate, neutral and complete. At the other end of the spectrum are “stubs,” articles containing only a few sentences. Additional editorial notes appearing at the top of some articles include “missing footnotes,” “requires authentication by an expert,” or “requires cleanup.” One-hundred and fifteen of the Wikipedia entries cited in the opinions I examined included editorial notes alerting the reader to something negative in the Wikipedia entry, but none of the 401 judicial opinions I examined mentioned these rankings when citing a Wikipedia entry.

Editorial notes can be helpful in evaluating a Wikipedia entry. But the analysis of the quality of an entry should not rest entirely on a note made by a volunteer Wikipedia editor. Any Wikipedia entry cited in a brief or judicial opinion should be evaluated for authority, completeness, accuracy and bias.<sup>15</sup> The authority of a Wikipedia entry is difficult to determine. Wikipedia entries are the products of collaboration, and no one individual author can be identified. The only clue to the author’s identity comes from the “View History” tab at the top of every Wikipedia entry. It reveals the user name or IP address of every user who edited the article. Completeness, accuracy and bias can be evaluated by watching for editorial notes appearing in the Wikipedia entry and by comparing the Wikipedia entry to a reliable source like a treatise or scholarly article.

## CITING WIKIPEDIA ENTRIES

The purpose of legal citation is “to allow the reader to efficiently locate the cited source.”<sup>16</sup> The constantly changing nature of Wikipedia entries makes them challenging sources to cite. Every Wikipedia entry cited in the 401 cases that I examined had changed since the date the court cited it. Some of the changes were minor and improved the entry. In other cases, the entry changed significantly and no longer contained the information it was cited for in the judicial opinion.<sup>17</sup>

Changes in Wikipedia entries may be of little concern to researchers if the initial citation was

for a trivial point or collateral matter. But if the Wikipedia entry was cited to support an assertion made in a judicial opinion, or was otherwise relied upon by the court, then the inability to examine the entry as the judge saw it has more severe consequences. Future researchers may not be able to completely comprehend the point the judge was making if they cannot retrieve the exact Wikipedia entry as the judge viewed it. This may ultimately lead to uncertainty and instability in the law.<sup>18</sup>

Specific information must be included in the citation to allow the reader to view the Wikipedia entry as it appeared at the time it was cited. The rules on citing Internet sources in the recently released 19th edition of *The Bluebook* are a vast improvement over the previous edition’s rules. Rule 18.2.2 covers direct citations to Internet sources. Under this rule, Wikipedia entries should be cited as follows:

*Wear and Tear*, WIKIPEDIA (Mar. 26, 2009, 2:15 PM), [http://en.wikipedia.org/w/index.php?title=Wear\\_and\\_tear&oldid=237134914](http://en.wikipedia.org/w/index.php?title=Wear_and_tear&oldid=237134914).

Rule 18.2.2 requires a citation to include the title of the page viewed, the date and time it was viewed and a permanent link to the page viewed. Wikipedia provides a permanent link under the toolbox section on the left-hand side of each entry. This link will take future researchers to the entry exactly as it looked when it was cited.

The Judicial Conference of the United States recently released guidelines on the citation of Internet sources that provide additional safeguards against disappearing Internet sources.<sup>19</sup> The guidelines urge judges to capture Internet sources when citing a source that is “fundamental to the reasoning of the opinion and refers to a legal authority or precedent that cannot be obtained in any other format”<sup>20</sup> or if there is reason to expect that the source may “be removed from the website or altered.”<sup>21</sup> The guidelines are a positive development but are not mandatory and do not apply to state courts. In my study, 26 percent of the citations to Wikipedia were found in state court opinions.<sup>22</sup> The National Center for State Courts should follow the lead of the Judicial Conference in this area and develop similar guidelines for state courts.

## WHEN NOT TO CITE WIKIPEDIA

Wikipedia should not be cited as the only source to support reasoning or analysis. One of the most egregious examples comes from the 7th Circuit Court of Appeals in the case of *Rickher v. Home Depot*<sup>23</sup> where the court relied on the Wikipedia definition of “wear and tear” to refute a claim central to the appellant’s case that wear and tear encompassed damage that would occur during the proper use of a rental tool. Blogger and law professor Eugene Volokh was troubled by the use of Wikipedia as a “substantial authority”<sup>24</sup> and cautioned that because the accuracy of Wikipedia had not been demonstrated, courts should rely on more traditional sources when deciding important and controversial matters.

Wikipedia has been used in disturbing ways in immigration cases. In *Badasa v. Mukasey*<sup>25</sup> the 8th Circuit wisely remanded a Board of Immigration Appeals decision denying an asylum request because it was based solely on a definition taken from Wikipedia. The 8th Circuit’s opinion contained several paragraphs critiquing the reliability of Wikipedia. One blogger noted that the use of Wikipedia in this case “would almost be humorous if it weren’t for the dire consequences of rejecting a valid asylum application and returning a refugee to a country in which they face torture and possibly death.”<sup>26</sup>

In *Tandia v. Gonzales*,<sup>27</sup> the 10th Circuit Court of Appeals cited a Wikipedia entry to support an attack on the credibility of an asylum seeker. According to the asylum seeker, the population of his hometown Kaedi was 800. The court found that this claim undermined the asylum seeker’s credibility. This finding was supported by a quotation from the Wikipedia entry on Kaedi which states that “it is presently a city of over 60,000 people.”<sup>28</sup> A more reliable source of population information should have been used when questioning the credibility of the asylum seeker. The U.S. Department of State background notes contain detailed information about all countries in the world.<sup>29</sup> The background note on the city of Kaedi located in the African country of Mauritania puts the city’s population at only 34,000.<sup>30</sup> The court should have turned to a more reliable source of infor-

“The 8th Circuit’s opinion contained several paragraphs critiquing the reliability of Wikipedia.”

mation for this important fact instead of unreliable information obtained from Wikipedia.

Courts should not take judicial notice of Wikipedia content because it does not meet the evidentiary requirements for judicial notice. Courts may take judicial notice of a fact that is “not subject to reasonable dispute in that it is either 1) generally known within the territorial jurisdiction of the trial court or

2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”<sup>31</sup> Wikipedia entries are often the subjects of dispute, and Wikipedia has an elaborate process in place to settle disputes over entries. Additionally, Wikipedia is a source whose accuracy can be reasonably questioned. It can be edited at any time by anonymous editors. Wikipedia entries are often marked with editorial notes including “missing footnotes,” “doesn’t cite any sources,” “requires authentication by an expert” and “neutrality disputed.”<sup>32</sup> In the majority of cases,<sup>33</sup> courts have wisely refused to take judicial notice of Wikipedia content. However, courts have taken judicial notice of Wikipedia content in a small handful of cases.<sup>34</sup> No Oklahoma or 10th Circuit opinion has spoken to this issue yet.

Wikipedia entries should not be accepted to demonstrate the presence or absence of a material fact in the context of a motion for summary judgment. Anyone can edit a Wikipedia entry at any time to support their version of the facts at issue in a case. Courts should be wary of any such “opportunistic editing”<sup>35</sup> of Wikipedia and should not trust it in the context of a motion for summary judgment. In several cases courts have relied on a Wikipedia entry along with other sources to grant or deny a motion for summary judgment.<sup>36</sup> But so far courts have wisely rejected attempts to show the presence or absence of a material fact based only on a Wikipedia entry.<sup>37</sup> No Oklahoma or 10th Circuit case has addressed the use of Wikipedia in the context of a motion for summary judgment.

## CONCLUSION

In James Surowiecki’s book, *The Wisdom of Crowds*, he argues that “under the right circumstances, groups are remarkably intelligent, and are often smarter than the smartest people in

them.”<sup>38</sup> Oklahoma judges and lawyers should be cautious when relying on the wisdom of the crowds who create and edit Wikipedia content. Wikipedia has only been cited in a handful of judicial decisions in Oklahoma but citations will likely increase in the future.<sup>39</sup> Wikipedia’s rapidly updated crowd-sourced content makes it particularly useful in limited situations. But the impermanent nature and questionable quality of its content should give lawyers and judges pause before citing Wikipedia.

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1. Lee F. Peoples, “The Citation of Wikipedia in Judicial Opinions,” 12 *YALE J.L. & TECH.* 1, 6 (2009-10) (reporting the results of my exhaustive survey of every judicial opinion citing a Wikipedia entry).
2. *Nautilus Ins. Co. v. Reuter*, 537 F.3d 733, 737 (7th Cir. 2008).
3. “About This Site,” *Workers’ Compensation Law* (Sept. 29, 2010, 10:37 a.m.), [www.workerscompensationok.com/about-this-site](http://www.workerscompensationok.com/about-this-site).
4. *About*, SCOTUSWIKI (July 16, 2010, 9:35 a.m.), [www.scotuswiki.com/index.php?title=ScotusWiki>About](http://www.scotuswiki.com/index.php?title=ScotusWiki>About).
5. “7th Circuit’s Wiki Lets Practitioners Contribute,” Vol. 39 No. 6 *The Third Branch 2* (June 2007).
6. Robert J. Ambrogi, “Crowdsourcing the Law: New Sites Rely on the Community to Gather and Refine Expertise,” *Law Tech. News*, Aug. 1, 2010, [www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202463905267](http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202463905267).
7. See *People v. Rodriguez*, 860 N.Y.S.2d 859 (Crim. Ct. 2008) turning to Wikipedia for a definition of how MySpace works; *People v. Hawlish*, No. G036077, 2007 WL 915149, at \*6 n.5 (Cal. Ct. App. March 27, 2007) using Wikipedia to define slang drug terms; and *Healthcare Advocates Inc. v. Harding, Earley, Follmer & Frailey*, 497 F. Supp. 2d 627, 630 (E.D. Pa. 2007) referring to Wikipedia to define a technology related term.
8. *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157, 1168-69 (9th Cir. 2008).
9. *US v. Haymond*, 2009 WL 3029592 (N.D. Okla. 2009).
10. *US v. Welch*, 291 Fed. Appx. 193, 203-04 (10th Cir. 2008).
11. *Ferguson v. Stonebridge Life Ins. Co.*, No. 271488, 2007 WL 286793, at \*3 (Mich. Ct. App. Feb. 1, 2007).
12. *Laasmar v. Phelps Dodge Corp. Life, Accidental Death & Dismemberment and Dependent Life Ins. Plan*, No. 06-cv-00013-MSK-MJW, 2007 WL 1613255, at \*4 n.5 (D. Colo. June 1, 2007).
13. *Peoples*, *supra* note 1, at 32-33.
14. For a thorough explanation of editorial notes included in Wikipedia articles see *About*, WIKIPEDIA (July 16, 2010, 9:20 a.m.), [www.en.wikipedia.org/w/index.php?title=Wikipedia:About&oldid=329127169](http://www.en.wikipedia.org/w/index.php?title=Wikipedia:About&oldid=329127169).
15. Diane Murley, “In Defense of Wikipedia,” 100 *Law Libr. J.* 593, 599 (2008).
16. “*The Bluebook: A Uniform System of Citation 1*” (Columbia Law Review Ass’n et al. eds., 19th ed. 2010).
17. See the specific examples from the *Helen of Troy* and *Murdick* cases discussed in *Peoples*, *supra* note 1, at 39-40.
18. This paragraph originally appeared in my article “The Citation of Wikipedia in Judicial Opinions,” *supra* note 1, at 39.
19. “Judicial Conference of the U.S., Guidelines on Citing to, Capturing, and Maintaining Internet Resources in Judicial Opinions/Using Hyperlinks in Judicial Opinions” (2009) [hereinafter *guidelines*], available at [www.inbar.org/LinkClick.aspx?fileticket=hptDW9DihFY%3D&tabid=356](http://www.inbar.org/LinkClick.aspx?fileticket=hptDW9DihFY%3D&tabid=356). For more information on disappearing Internet sources see Mary Rumsey, “Runaway Train: Problems of Permanence, Acces-

- sibility, and Stability in the Use of Web Sources in Law Review Citations,” 94 *Law Libr. J.* 27, 30 (2002).
20. *Guidelines*, *supra* note 19, at 2.
  21. *Id.* at 3.
  22. 103 out of 401 cases citing Wikipedia.
  23. 535 F.3d 661 (7th Cir. 2008).
  24. Eugene Volokh, “Questionable Use of Wikipedia by the Seventh Circuit?,” *Volokh Conspiracy* (July 30, 2008, 1:02 p.m.), <http://volokh.com/2008/07/30/questionable-use-of-wikipedia-by-the-seventh-circuit>.
  25. 540 F.3d 909 (8th Cir. 2008).
  26. Jaya Ramji-Nogales, “Citing Wikipedia—Harmless Error?,” *Concurring Opinions* (Sept. 3, 2008, 9:26 a.m.), [www.concurringopinions.com/archives/2008/09/citing\\_wikipedi.html](http://www.concurringopinions.com/archives/2008/09/citing_wikipedi.html).
  27. 236 Fed. Appx. 455, 457 (10th Cir. 2007).
  28. *Id.*
  29. “Background Notes,” [www.state.gov/r/pa/ei/bgn/index.htm](http://www.state.gov/r/pa/ei/bgn/index.htm) (last visited July 16, 2010).
  30. *Mauritania*, “Background Notes” (July 16, 2010, 9:20 a.m.), [www.state.gov/r/pa/ei/bgn/5467.htm#geo](http://www.state.gov/r/pa/ei/bgn/5467.htm#geo).
  31. *Fed. R. Evid.* 201(b).
  32. *About*, WIKIPEDIA, *supra* note 14.
  33. *Steele v. McMahon*, No. CIV S-05-1874 DAD P, 2007 WL 2758026 (E.D. Cal. Sept. 21, 2007), *Flores v. State*, No. 14-06-00813-CR, 2008 WL 4683960 (Tex. Ct. App. Oct. 23, 2008), and *Capcom Co. v. MKR Group Inc.*, No. C 08-0904 RS, 2008 WL 4661479, at \*4 (N.D. Cal. Oct. 20, 2008).
  34. *Helen of Troy L.P. v. Zotos Corp.*, 235 F.R.D. 634, 639 (W.D. Tex. 2006) and *Aquila v. Nationwide Mutual Insurance Co.*, No. 07-2696, 2008 WL 4899359 (E.D. Pa. Nov. 13, 2008).
  35. Noam Cohen, “Courts Turn to Wikipedia, but Selectively,” *N.Y. Times*, Jan. 29, 2007.
  36. *C & R Forestry Inc. v. Consolidated Human Resource AZ Inc.*, No. CV 05-381-N-EJL, 2008 WL 4000161 (D. Idaho Aug. 28, 2008), *Randy Disselkoen Properties LLC v. Charter Township of Cascade*, No. 1:06-cv-141, 2008 WL 114775 (W.D. Mich. Jan. 9, 2008), *General Conference Corp. of Seventh-Day Adventists v. McGill*, 624 F. Supp. 2d 883 (W.D. Tenn. 2008), and *Murdick v. Catalina Marketing Corp.*, 496 F.Supp.2d 1337, 1350 -51 (M.D. Fla. 2007).
  37. *Davage v. City of Eugene*, No. 04-6321-HO, 2007 WL 2007979 (D. Or. July 6, 2007).
  38. James Surowiecki, *The Wisdom of Crowds: “Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies, and Nations,”* at xiii (2004); see also Cass R. Sunstein, *Infotopia: “How Many Minds Produce Knowledge”* (2006).
  39. A search of Westlaw’s Oklahoma State and Federal Civil Trial Court Filings (OK-FILINGS-ALL) database revealed 10 filings citing Wikipedia or another wiki.

## ABOUT THE AUTHOR



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